



Federal Communications Commission
Washington, D.C. 20554

March 9, 2007

DA 07-1222

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Hearst-Argyle Stations, Inc.
KQCA(TV)
c/o Brooks Pierce McLendon Humphrey & Leonard, LLP
P.O. Box 1800
Raleigh, North Carolina 27602

Re: Hearst-Argyle Stations, Inc.
KQCA(TV), Stockton, California
Facility ID No. 10242
File No. BRCT-20060809AAP

Dear Licensee:

This refers to your license renewal application for station KQCA(TV), Stockton, California.

In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewal applications the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a "program-length commercial").¹

On August 9, 2006, you filed the above-referenced license renewal application for station KQCA(TV). In response to Section IV, Question 5 of that application, you certify that, during the previous license term, KQCA(TV) failed to comply with the limits on commercial matter in children's programming specified in Section 73.670 of the Commission's Rules. In Exhibit 19, you indicate that station KQCA(TV) violated the children's television commercial limits and policies on August 24, 2002, and September 24, 2002. First, you state that one conventional

¹ *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

overage occurred on August, 24, 2002, and was 30-seconds in duration. You attribute this incident to human error and describe corrective measures taken to prevent future violations.

Second, you report that on September 24, 2002, station KQCA(TV) aired a WB Television Network commercial for the Gameboy Advance E-Reader, during the “Pokemon” program. According to your description, the commercial contained “fleeting partial images of three Pokemon game cards” displayed as three cards within a six card fan arrangement. You state that the partially hidden “Pokemon” cards were visible for approximately 1.04 seconds and that “Pokemon” is not mentioned in the audio of the commercial. In addition, you indicate that only the letters “MON” were visible and that no “Pokemon” characters were discernible. You assert that this incident differs from the instances in which the Commission has concluded that a program constitutes a program-length commercial. Specifically, you argue that in previous cases, the commercials depicted characters for a longer period of time than the “Pokemon” game cards were shown in this case. Consequently, you contend, the characters in prior cases were more recognizable than the “Pokemon” cards in this case. You argue that even if the “Pokemon” game cards had been visible for more than one second, they were not identifiable in the commercial for the Gameboy Advance E-Reader because no “Pokemon” characters were shown, no more than half of each card was displayed and only the letters “MON” were visible. You also indicate that the “Pokemon” episode in which the Gameboy Advance E-Reader commercial appeared did not contain any “Pokemon” game cards. Thus, you opined that this incident does not constitute a program-length commercial because children would not perceive any linkage between the “Pokemon” program and the Gameboy Advance E-Reader commercial.

As a preliminary matter, we note that Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs. S. Rep. No. 227, 101st Cong., 1st Sess. 24 (1989). Thus, the Commission made it clear that program-length commercials, by their very nature, are extremely serious violations of the children’s television commercial limits, stating that the program-length commercial policy “directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter.”² Accordingly, in interpreting and applying the Commission’s policies regarding program-length commercials, we are concerned about and dealing with the cognitive abilities of young children, not adults.³

With respect to the station’s broadcast of the commercial for the Gameboy Advance E-Reader, although you assert that the “Pokemon” game cards appeared for 1.04 seconds during the commercial, it is well established that the determination as to whether a particular program is a program-length commercial is not dependent on the duration of the appearance of the program-related product in the commercial announcement. The Commission has stated on numerous occasions that, where a commercial announcement includes a product related to the program in

² *Children’s Television Programming*, 6 FCC Rcd at 2118.

³ See, e.g., *Scripps Howard Broadcasting Company (KNXV-TV)*, 12 FCC Rcd 19504, 19505 (MMB 1997) (*Scripps Howard*), *aff’d* 9 FCC Rcd 2547 (MMB 1994).

which the commercial is broadcast, the program is a program-length commercial regardless of the duration of the appearance of the program-related product in the commercial.⁴ Moreover, you acknowledge that the commercial contained images of three “Pokemon” game cards. We believe that, in the context of the cognitive abilities of young children, there is the potential for confusion between the Gameboy commercial and the “Pokemon” program regardless whether any “Pokemon” character is shown given the images of “Pokemon” game cards contained in the commercial and the consequent likelihood that children may associate it with the program.

Although you indicate that the 30-second overage resulted from human error, this does not mitigate or excuse the violations. In this regard, the Commission has repeatedly rejected human error and inadvertence as a basis for excusing violations of the children’s television commercial limits.⁵ Furthermore, corrective actions may have been taken to prevent subsequent violations of the children’s television rules and policies, but that, too, does not relieve KQCA(TV) of liability for violations which have occurred.⁶

Based upon the record before us, the violations described in your renewal application appear to have been isolated occurrences. Although we do not rule out more severe sanctions for violations of this nature in the future, we have determined that an admonition is appropriate at this time. Therefore, based upon the facts and circumstances before us, we ADMONISH you for the admitted violations of Section 73.670 of the Rules described in station KQCA(TV)’s renewal application.

⁴ *UTV of San Francisco, Inc. (KBHK-TV)*, 10 FCC Rcd 10986, 10988 (1995); *see also WPIX, Inc.*, 14 FCC Rcd 9077 (MMB 1999) (commercial for “Spirit of Mickey” home video showing brief image of Donald Duck on cover of video aired during “Quack Pack” program); *Act III Broadcasting License Corp. (WUTV(TV))*, 10 FCC Rcd 4957 (1995), *aff’d*, 13 FCC Rcd 10099 (MMB 1997) (commercial for a fast food restaurant promoting a trip to Disney World as a contest prize contained a brief image of Goofy and aired during the program “Goof Troop”).

⁵ *See, e.g., LeSea Broadcasting Corp. (WHKE(TV))*, 10 FCC Rcd 4977 (MMB 1995); *Buffalo Management Enterprises Corp. (WIVB-TV)*, 10 FCC Rcd 4959 (MMB 1995); *Act III Broadcasting License Corp. (WUTV(TV))*, 10 FCC Rcd 4957 (MMB 1995); *Ramar Communications, Inc. (KJTV(TV))*, 9 FCC Rcd 1831 (MMB 1994).

⁶ *See, e.g., WHP Television, L.P. (WHP-TV)*, 10 FCC Rcd 4979, 4980 (MMB 1995); *Mountain States Broadcasting, Inc. (KMSB-TV)*, 9 FCC Rcd 2545, 2546 (MMB 1994); *R&R Media Corporation (WTWS(TV))*, 9 FCC Rcd 1715, 1716 (MMB 1994); *KEVN, Inc. (KEVN-TV)*, 8 FCC Rcd 5077, 5078 (MMB 1993); *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969).

Accordingly, IT IS ORDERED that, a copy of this Letter shall be sent by First Class and Certified Mail, Return Receipt Requested to Hearst-Argyle Stations, Inc. at the address listed above, and to Mark J. Prak, Esquire, Brooks Pierce McLendon Humphrey & Leonard, LLP, P.O. Box 1800, Raleigh, North Carolina 27602.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau